

#### **§ 1400.4**

year for which the determination is made.

[61 FR 37566, July 18, 1996, as amended at 67 FR 61470, Oct. 1, 2002; 71 FR 66433, Nov. 15, 2006]

#### **§ 1400.4 Indian tribal ventures.**

An individual American Indian who receives payments through other than an Indian tribal venture is required to certify that they will not accrue total payments, including payments made to the Indian tribal venture and to the individual American Indian, in excess of the applicable payment limitation for programs specified in §1400.1.

#### **§ 1400.5 Scheme or device.**

(a) All or any part of the payment otherwise due a person on all farms in which the person has an interest may be withheld or be required to be refunded if the person adopts or participates in adopting a scheme or device designed to evade this part or that has the effect of evading this part. Such acts shall include, but are not limited to:

- (1) Concealing information that affects the application of this part;
- (2) Submitting false or erroneous information; or
- (3) Creating fictitious entities for the purpose of concealing the interest of a person in a farming operation.

(b) If the Deputy Administrator determines that a person has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of sections 1001, 1001A, or 1001C of the Food Security Act of 1985, as amended (7 U.S.C. 1281 note) such person shall be ineligible to receive payments under the programs specified in §1400.1 with respect to the year for which such scheme or device was adopted and the succeeding year.

[61 FR 37566, July 18, 1996, as amended at 67 FR 61470, Oct. 1, 2002]

#### **§ 1400.6 Commensurate contributions.**

In order to be considered eligible to receive payments under the programs specified in §1400.1 an individual or entity specified in §§1400.202 through 1400.210 must have:

(a) A share of the profits or losses from the farming operation that is

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commensurate with the individual's or entity's contribution to the operation; and

(b) Contributions to the farming operation that are at risk.

#### **§ 1400.7 Joint and several liability.**

If two or more individuals or entities are considered to be one person and the total payment received is in excess of the applicable payment limitation provision, such individuals or entities shall be jointly and severally liable for any liability that arises therefrom. The provisions of this section shall be applicable in addition to any liability that arises under a criminal or civil statute.

#### **§ 1400.8 Equitable adjustments.**

Actions taken by an individual or an entity in good faith on action or advice of an authorized representative of the Deputy Administrator may be accepted as meeting the requirements of this part to the extent the Deputy Administrator deems necessary to provide fair and equitable treatment to such individual or entity.

#### **§ 1400.9 Appeals.**

(a) Any person may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at part 780 of this title. With respect to such appeals, the applicable reviewing authority shall:

(1) Schedule a hearing with respect to the appeal within 45 days following receipt of the written appeal; and

(2) Issue a determination within 60 days following the hearing.

(b) The time limitations provided in paragraph (a) shall not apply if:

(1) The appellant, or the appellant's representative, requests a postponement of the scheduled hearing;

(2) The appellant, or the appellant's representative, requests additional time following the hearing to present additional information or a written closing statement;

(3) The appellant has not timely presented information to the reviewing authority; or

(4) An investigation by the Office of Inspector General is ongoing or a court proceeding is involved that affects the